

REMARKS

In the amendments above, Claims 1, 2, 4, 5, 9, 10, 12, 13, 15-17, 22, and 23 have been amended, and Claim 24 has been cancelled, to more particularly point out and distinctly claim Applicants' invention.

The Examiner has repeated the restriction requirement. Applicants confirm the election of the claims of Group I, namely, Claims 1-24.

Claims 1-23 and 25-27 have been provisionally rejected on the grounds of non-statutory obviousness-type double patenting as being unpatentable over Claims 1-25 of co-pending U.S. Patent Application No. 10/563,894. Applicants do not necessarily agree with the Examiner regarding the basis of this rejection. However, Applicants would certainly be willing to consider an appropriate response in the event that the claims of the co-pending application are patented.

The drawings have been objected to. The Examiner's attention is directed to the attached replacement drawings of Figures 1 to 5b.

The Examiner has objected to the abstract and the specification. The Examiner's attention is directed to the amendments above, which are believed to overcome these objections.

Claims 1-24 have been objected to and have been rejected under 35 U.S.C. §112, second paragraph, as being indefinite. The Examiner's attention is directed to the amendments above, which are believed to overcome this objection and rejection.

Claims 1 - 5 have been rejected under 35 U.S.C. 102(b) as being anticipated by Bergersen, U.S. Patent No. 4,784,605 ("Bergersen I"), and Claims 6 - 8 and 18 - 23 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Bergersen I as applied to Claim 1 above, and further in view of Bergersen, U.S. Patent No. 5,645,420 ("Bergersen II"). The Examiner maintains that it would have been obvious to a person of ordinary skill in the art at the time of the invention was made to have provided the appliance in variety of sizes (e.g., as

claimed) as taught by Bergersen II to the dental appliance of Bergersen I so that large groups of users may benefit from correcting open-bite tendencies and tongue thrust problems using the appliance.

Claims 9 - 17 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Bergersen I as applied to Claim 1 above, and further in view of DeLuke, U.S. Patent No. 6,837,246 ("DeLuke"). The Examiner maintains that it would have been obvious to a person of ordinary skill in the art to reduce the wing at the point of the ligament of the tongue to maintain the appliance in the mouth and that it would have been obvious to a person of ordinary skill in the art at the time the invention was made to have provided the wing of DeLuke to the dental appliance of Bergersen I for enhancing retention of the appliance into the user's mouth and to encourage users to breath through the nose, and which can serve as a diagnostic aid or test device to access a patient's problems.

Applicants respectfully traverse each of the above rejections.

Applicants respectfully urge that Bergersen I does not teach or suggest Applicants' invention. For example, Bergersen's drawings do not teach that the appliance would extent as far back as the device claimed herein - as far as back as the second permanent premolar. If anything, based on Fig. 1 alone, it seems that trough 12 of the appliance is designed for exactly two teeth, i.e., that it would not extend as far as the second permanent molar.

There is also a difference in the frontal area. Bergersen I has individual sockets and a slit for the incisors (Column 2 lines 41 et seq.), while our appliance comprises an essentially uniform recess for the incisors. (See amended Claim 1.)

Therefore, Bergersen I does not suggest or disclose Applicants' claimed invention, and the deficiencies of Bergersen I are not overcome by Bergersen II or DeLuke. Therefore, the rejections under § 102(b) or 103(a) should be withdrawn.

Should any changes to the claims and/or specification be deemed necessary to place the application in condition for allowance, the Examiner is respectfully requested to contact the undersigned to discuss the same.

Reconsideration and allowance of the claims herein are respectfully requested.

Respectfully submitted,

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By: William H. Dippert
William H. Dippert
Reg. No. 26,723

Wolf Block LLP
250 Park Avenue, 10th Floor
New York, New York 10177
(212) 986-1116